



W.P.Nos. 2061 & 2062 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2025

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CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

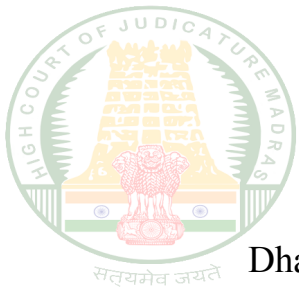
W.P.Nos.2061 & 2062 of 2012
and M.P.Nos. 1 & 1 of 2012

D.K.Sadasivam

.. Petitioner
In both WPs

VS

- 1.The Commercial Tax Officer,
Commercial Tax Department,
Palakode Town & Taluk,
Dharmapuri District.
- 2.The Assistant Commissioner,
Commercial Tax Department
Palakode Town & Taluk,
Dharmapuri District.
- 3.The District Collector,
Dharmapuri District.
- 4.The Tamilnadu Industrial Investment
Corporation Limited,
No.692, Anna Salai,
Nandanam, Chennai – 600 035.
- 5.The Tamilnadu Industrial Investment
Corporation Limited,
No.1, Pennagaram Road,



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Dharmapuri – 636 702.

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6.M/s.Jayam Food Processing Industries,
No.12, Sigarahalli Division,
Nallanur, Pennagaram,
Dharmapuri.

.. Respondents
In both WPs

Prayer in W.P.No. 2061 of 2012: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the 1st respondent pertaining to the demand notice dated 12.01.2012, in respect of the property situate in S.Nos. 7/10, 7/11 and 13/1 in Sigarahalli Village, Pennagaram Taluk, Dharmapuri District and quash the same.

Prayer in W.P.No. 2062 of 2012: Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus forbearing the respondents 1 and 2 from in anyway attaching or alienating the petitioner's property measuring an extent of acre 4.02 situate in S.Nos. 7/10, 7/11 and 13/1 in Sigarahalli Village, Pennagaram Taluk, Dharmapuri District.

For Petitioner : Mr.P.Valliappan
Senior Counsel
Mr.T.Deeraj
(in both WPs)

For Respondents : Mr.G.Nanmaran,
Special Government Pleader
for R1 and R2
No appearance for R3 to R6
(in both WPs)



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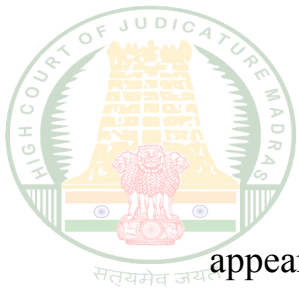
COMMON ORDER

(Order of the Court was made by Dr. ANITA SUMANTH.,J)

These two Writ Petitions have been filed by an individual, the successful purchaser of the property at S.Nos. 7/10, 7/11 and 13/1 in Sigarahalli Village, Pennagaram Taluk, Dharmapuri District (subject property). The prayer in W.P.No.2061 of 2012 is for a Certiorari calling for and quashing demand notice dated 12.01.2012 issued by the Commercial Taxes Officer, Dharmapuri District/R1, in respect of the subject property.

2. The prayer in W.P.No.2062 of 2012 is for a mandamus forbearing R1 as well as the Assistant Commissioner of the Commercial Taxes Department, Dharmapuri District/R2 from in any way attaching or alienating the subject property. The District Collector is arrayed as R3. The Tamil Nadu Industrial Investment Corporation at Chennai and Dharmapuri is arrayed as R4/R5 (hereinafter referred to either as TIIC or as R4/R5) and one Jayam Food Processing Industries is arrayed as R6 (hereinafter referred to either as R6 or assessee).

3. R3 to R6 are unrepresented before us and we have heard the detailed submissions of Mr.P.Valliappan, learned Senior Counsel



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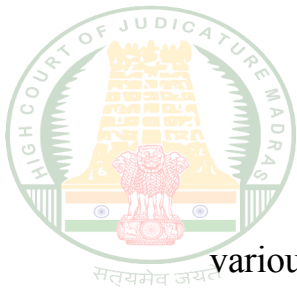
appearing for Mr.T.Deeraj, learned counsel for the petitioner and Mr.Nanmaran, learned Special Government Pleader for R1 and R2.

Counters have been filed on behalf of R1/R2 as well as R4/R5.

4. From the pleadings as well as the submissions made by learned counsel, the following facts emerge. R4/R5 had provided financial assistance to R6 for setting up of a manufacturing project for fried gram. The deed of hypothecation-cum-mortgage was executed qua R6 and R4 on 11.07.1991 in respect of the subject property admeasuring a total extent of 4.13 acres by way of security for the financial assistance extended. Out of the total extent of 4.13 acres, 11 cents had been acquired by the Government for widening of the road.

5. The Encumbrance Certificate that has been placed on record reflects the creation of the charge on the subject property even as early as on 11.07.1991/15.07.1991. There appears to have been defaults by R6 in repayment of the financial facilities to TIIC and hence TIIC, invoking its power under Section 29 of the State Financial Corporations Act, 1951 (in short 'SFC Act'), took possession of the subject property exercising the power to sell.

6. Auction sale notice was issued on 24.09.2003 by TIIC offering



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various units held by TIIC for public auction through sealed tender. Item 3

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thereof refers to the subject property and reads thus:

<i>Name of the Branch</i>	<i>Location</i>	<i>Activity</i>	<i>Details of Assets</i>
<u><i>Dharmapuri Branch</i></u> 3. <i>Jayam Food Processing Unit</i>	<i>Sigralahalli Village Konangihalli, Near Thalapallam Village, Pennagaram TK</i>	<i>Mfr. of Fried Grams</i>	<i>Land 4.13 acres & Building 21419 Sq.ft. ACC Roof 477 Sq.ft. RCC roofing 2978 sq.ft. Aluminium sheet roof open well 8500 sq.ft. drying yard 822 sq.ft. MTR Security shed & compound wall with Machinery</i>

7. Our attention is specifically drawn by the learned Special Government Pleader to the conditions in that auction sale notice to the effect that *‘the assets of the following industrial units are offered for sale ‘AS IS WHERE IS CONDITIONS’ through public auction/sealed tender at our branch offices’*. Thus, according to him, the incident of auction sale carried with it the liability to sales tax arrears as well.



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8. This would bring us to the rival claim of the Commercial Taxes Department as put forth by the learned Special Government Pleader. He would submit, relying on the counter filed, that the assessee has been in arrears of sales tax in respect of periods 1993-94 to 1996-97 of a total amount of Rs.4,61,29,779/-. The break-up is as follows:

<i>Year</i>	<i>Amount of arrears</i>
<i>1993-94</i>	<i>Rs.2282473.00</i>
<i>1994-95</i>	<i>Rs.11614553.00</i>
<i>1995-96</i>	<i>Rs.24587195.00</i>
<i>1996-97</i>	<i>Rs.764558.00</i>
<i>Total</i>	<i>Rs.46129779.00</i>

9. According to learned SGP, it is the Commercial Taxes Department that is entitled to first claim upon the assets of the assessee, as those arrears would constitute crown debts over which the Commercial Taxes Department would hold priority and first charge.

10. In this regard, he would rely on the provisions of Section 24 of the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act'), specifically sub-sections (1) and (2) thereof as well as a slew of decisions as follows:

(i) *R.M.Arunachalam v Commissioner of Income-Tax, Madras*¹

(ii) *Punjab Urban Planning and Development Authority and others*

¹ (1997) 7 SCC 698



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*v Raghu Nath Gupta and others*²

*(iiv) United Bank of India v Official Liquidator and others*³

*(iv) State Tax Officer v Rainbow Papers Limited*⁴

*(v) R.S.Raghunath v State of Karnataka and another*⁵

(vi) State Bank of Bikaner and Jaipur v. National Iron and Steel

*Rolling Corporation and Others*⁶ .

11. Learned Senior Counsel for the petitioner compares the provisions of Section 24 of the TNGST Act and Section 26 E of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) pointing out that Section 26E that deals with priority to secured creditors commences with the non-obstante clause, as per which, notwithstanding anything contained in any other law for the time being in force, after the registration of security interest, the debts due to a secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central or State Government or local authority.

12. In this context, learned counsel for the petitioner would rely on a decision of the Division Bench of this Court in the case of *The Assistant*

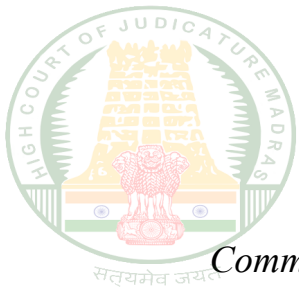
2 (2012) 8 SCC 197

3 (1994) 1 SCC 575

4 (2023) 9 SCC 545

5 (1992) 1 SCC 335

6 (1995) 96 STC 612 (SC)



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Commissioner (CT), Anna Salai III, Assessment Circle, Chennai v the

*Indian Overseas Bank and others*⁷ to the effect that it is the financial corporation/financial institution that would hold priority in respect of the debts.

13. That decision was rendered in the context of the rival claims of the Financial Institution and the Commercial Taxes Department, applying Section 26E of the SARFAESI Act and holding that the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.

14. We are given to understand that in a Special Leave Petition filed by Indian Overseas Bank challenging the aforesaid order, the Supreme Court has granted an order of status quo.

15. The petitioner draws attention to Section 29 of the SFC Act which is the basis for auction sale by TIIC, and which reads as follows:

29. Rights of Financial Corporation in case of default .-

(1) Where any industrial concern, which is under a liability to the Financial Corporation under an agreement, makes any default in repayment of any loan or advance or any instalment thereof or in meeting its obligations in relation to any guarantee given by the corporation or

⁷ W.P.No.2675 of 2011 etc batch dated 10.11.2016 (MHC)



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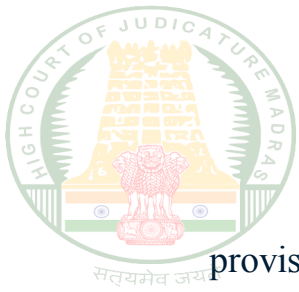
otherwise fails to comply with the terms of its agreement with the Financial Corporation, the Financial Corporation shall have the right to take over the management or possession or both of the industrial concern, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the Financial Corporation.

(2) Any transfer of property made by the Financial Corporation, in exercise of its powers under sub-section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

.....”

16. This provision makes it clear that the Financial Corporation, in this case TIIC, would hold the right to take over the management, possession or both, of the industrial concern along with the properties pledged, mortgaged, hypothecated or assigned to it. Sub-Section (2) states that any transfer of the property mortgaged to TIIC, in exercise of its powers under sub-Section (1), shall vest in the transferee (the auction purchaser/petitioner herein), all rights in or to the property transferred, as if such transfer had been made by the owner of the property.

17. The attempt of the petitioner before us is to state that the non-obstante clause under Section 26E of the SARFAESI Act would prevail over the provisions of Section 24 of the TNGST Act that are general in nature, and the SARFAESI Act being a Special Act would override the



provisions of the TNGST Act.

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18. In R.S.Raghunath (*supra*), relied upon by the learned Special Government Pleader, three Judges of the Hon'ble Supreme Court dealt with the validity of certain promotions made in the Transport Department in Karnataka. They were required to examine the provisions of the Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1976 and Karnataka Civil Services (General Recruitment) Rules, 1977. In that context, they dealt with the purpose and effect of a non-obstante clause in the general recruitment rules which specifically provided that those rules would not be applicable to those State Civil Services that were governed by express provisions under any law for the time being in force.

19. When the General Rules were enforced, the Special Rules were already holding the field and hence the application of the General Rules were excluded to the extent of the field being occupied by the Special Rules. Two Hon'ble Judges held that the non-obstante clause in the General Rules would not have an overriding clause in displacing the Special Rules and the application of the Special Rules would continue, with one Hon'ble Judge dissenting.

20. In the course of the discussion, the Bench observes as follows:



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11.....*On a conspectus of the above authorities it emerges that the non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect in case of a conflict. But the non-obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment and if the words of the enactment are clear and are capable of a clear interpretation on a plain and grammatical construction of the words the non-obstante clause cannot cut down the construction and restrict the scope of its operation. In Such cases the non-obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the Legislature by way of abundant caution and not by way of limiting the ambit and scope of the Special Rules.*

21. Relying on the above conclusion, he would urge that both the SARFAESI Act and the TNGST Act are special enactments and the charge created under Section 24 of the latter would be equally efficacious to protect the interests of the Sales Taxes Department.

22. The petitioner would also rely on a decision, authored by one of us, in *Corporation Bank v The Commissioner of Income Tax Department, Investigation Building, Chennai and others*⁸, which is in the context of a similar rival claim, though advanced by the Income Tax Department in that case. We do not think that this decision has any relevance to the present matter.

⁸ W.P.No.27409 of 2019 etc batch dated 21.04.2021 (MHC)



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23. Though some tentative arguments have been advanced by learned counsel for the petitioner to the effect that the petitioner is a bonafide purchaser and his rights must be so protected, this has been countered by learned Special Government Pleader by reference to the decision of the First Bench of this Court in *R.Balasubramanian v Additional Deputy Commercial Tax Officer III, Thoothukudi*⁹.

24. In that case too, it was the claim of the appellant that he was a bonafide purchaser falling within the exempted category under Section 24-A of the TNGST Act which deals with transfers to defraud the revenue. The Bench has, by way of a crisp order, concluded that the question of bonafides or otherwise of a purchaser cannot be gone into in a Writ Petition under Article 226 of the Constitution of India as that would entail marshalling and appreciation of factual matters that is best left to a Civil Court.

25. Hence, they hold that the proper remedy for the appellant was to approach the Civil Court to establish his rights, particularly his claim as bonafide purchaser. The Appellant was relegated to regular suit as held in *Padma Coffee Works V. Commercial Tax Officer, Rockfort*¹⁰.

⁹ W.A.(MD) No. 130 of 2005 dated 07.02.2008 (MHC)

¹⁰ 114 STC 494



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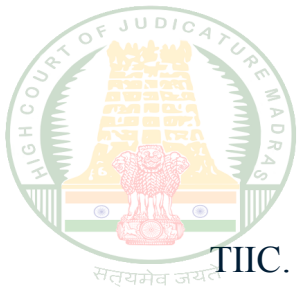
26. With this, the door is closed on the tentative submissions of the petitioner in regard to the bonafide nature of the transaction. We hence restrict ourselves in this order to the legal issue relating to priority of charge and now proceed to discuss the decisions cited by the parties.

27. In *Rainbow Papers Limited* (supra), the question decided related to priority between a charge under the Gujarat Value Added Tax Act, 2003 and one in terms of the Insolvency and Bankruptcy Code, 2016. We are not, in this case, concerned with the aforesaid two enactments.

28. Learned Special Government Pleader next relies on the judgment in *United Bank of India* (supra) to state that it is the responsibility of the purchaser to satisfy himself about the title, encumbrances and other particulars of the property offered for auction as the property was brought to auction on 'AS IS WHERE IS BASIS'.

29. We are of the considered view in the present circumstances, that the above stipulation cannot provide guidance, or be a parameter to decide the legal question of priority of charge.

30. The auction purchaser, as part of expected due diligence, might well have verified the Encumbrance Certificate prior to making a bid, in which event, such Certificate would have revealed the prior charge of



TIIC. Hence, it also cannot be said in this case that the auction purchaser/petitioner has not been vigilant.

31. The judgment in *Punjab Urban Planning and Development Authority* (supra) also relates to the condition of 'AS IS WHERE IS BASIS', which we have dealt with in the paragraphs supra.

32. In the case of *National Iron & Steel Rolling Corporation and others* (supra), the Supreme Court considered the priority held by the State Bank of Bikaner and Jaipur qua that held by the Commercial Tax Officer. The claim of the Commercial Tax Officer rested on Section 11AAAA of the Rajasthan Sales Tax Act, 1954 which stated that notwithstanding anything to the contrary contained in any law for the time being in force, any amount of tax, penalty, interest and any other sum payable by a dealer or any person under that Act, shall be the first charge on the priority of a dealer, or such person.

33. This judgment has been taken note of by this Court in *Tamilnad Mercantile Bank Ltd. v. Commercial Tax Officer, South Avani Moola Veethi Circle, Madurai*¹¹ and has been distinguished noticing the difference in language between the relevant provisions under the

¹¹ (2009) 23 VST 151 (Mad)



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Commercial Taxes enactments. The critical difference is that while Section 24 creates a charge over all other claims, it is not as categorical as the Rajasthan Sales Tax Act, which expressly states that the charge created under the latter enactment shall be a first charge.

34. In the case of *Tamilnad Mercantile Bank Ltd* (supra), the rival claims were by the Commercial Taxes Department and by the Banking Institution. The assessee/respondent in that case had defaulted in payment of tax and proceedings for recovery had been initiated as against the property by the respondent in a sale under the provisions of the SARFAESI Act.

35. The Court took note of the following judgments and discussed the same in detail. i) *E.T. & T.D. Corpn. Ltd. V. State of Rajasthan*¹², ii) *Dena Bank V. Bhikhabhai Prabhudas Parkesh and Co. and others*¹³, iii) *State Bank of Bikaner & Jaipur V. National Iron and Steel Rolling Corporation and others* (supra), iv) *Central Bank of India V. State of Tamil Nadu*¹⁴, v) *Thane Janata Bahakari Bank Ltd. V. Commissioner of Sales Tax and others*¹⁵, vi) *CST V. Radhakrishnan*¹⁶, vii) *Dattathreya*

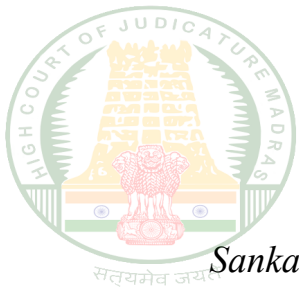
12(1999) 115 STC 545

13120 STC 610

14113 STC 145

15148 STC 32

16AIR 1979 SC 1588



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*Sankar Mote and others V. Anand Chinthaman Datar and others*¹⁷ and

viii) *ICICI Bank Ltd. (formerly Bank of Madura Ltd.) V. Official Liquidator, Liquidator of Vibrant Investments and Properties Ltd.*¹⁸.

36. The relevant dates, being the date of creation of equitable mortgage by deposit of title deeds in the Bank were noted as being February, 1984. There is a finding of the Court that the orders of assessment were passed only thereafter and hence the Court holds that when the law in favour of the Bank had fructified even prior to the demand being raised under the provisions of the TNGST Act, it is the anterior charge created by the Bank that would prevail.

37. From a study of the above cases, it emerges that in matters of the present nature, and in an era prior to the SARFAESI Act and Recovery of Debts due to Banks and Financial Institutions Act, 1993, the relevant factor would be to ascertain which of the contesting entities had registered the charge first or, in other words, in which case, the charge was anterior.

17(1974) 2 SCC 799
182005 (1) CTC 758



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38. Section 26E was inserted by Act 44 of 2016, with effect from 24.01.2020. Hence, in our considered view the dates of registration of charges is what should prove paramount in such circumstances, in a decision relating to ascertainment of prior charge. Before us, the admitted position is the charges registered by the TIIC are of 1991 vintage, whereas the charges registered by the Commercial Taxes Department are of the year 2005.

39. This can be determined simply by verifying the Encumbrance Certificate which has been provided to us by the parties in their compilation. A perusal of the Encumbrance Certificate sets out very clearly that it is the TIIC which had registered the charge as early as on 11.07.1991 and 15.07.1991, whereas the charge registered by the Commercial Taxes Department is only on 13.04.2005/18/04.2005. The two entries in the Encumbrance Certificate are extracted below:

Certificate of Encumbrance on Property

TIIC:

Sl. No வ. எண்	Description of Prop./ சொத்து விவரம் (Survey No & Area)	எ.கொ.நா/ DOE & பதிவு நாள் / DOR	Nature & Value/ தண்மை & மதிப்பு	Name of Executants எழுதி கொடுத்தவர் (E) / Claimants - எழுதி வாங்கியவர்	Vol.No தொகுதி/P. No. பக்கம்	DNo ஆ எண்/ Yr / ஆண்டு
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4	S.F.No.7/10 S.F.No.7/11 S.F.No.13/1	11/07/1991 15/07/199	Mortgage deed without possession	(C) (E) ஜெயம் புட்புராசஸ் இண்டஸ்ட்ரிஸ் பார்ட்னர் (E) கிருஷ்ணசாமி 1 ஆர் (E) ஜெயம் 2 கே (C) சென்னை தமிழ்நாடு தொழில் முதலீட்டு கழகம்	674 411	636 1991
	Sigaralahalli சொத்தின் தன்மை HOUSE SITE					

Commercial Taxes Department:

Sl.No வ.எண்	Description of Prop./ சொத்து விவரம் (Survey No & Area)	எ.கொ.நா/ DOE & பதிவு நாள் / DOR	Nature & Value/ தன்மை & மதிப்பு	Name of Executants எழுதி கொடுத்தவர் (E)/ Claimants - எழுதி வாங்கியவர் (C)	Vol.No தொகுதி/ P. No. பக்கம்	DNo ஆ எண்/ Yr / ஆண்டு
1	S.F.No.7/10 S.F.NO.7/11 S.F.NO.13/1	13/04/2005 18/04/2005	Others	(E) ஜெயம் புட்புராசசிங் இண்டஸ்ட்ரிஸ் (C) துணை வணிக வரி அலுவலர் பாலக்கோடு	854 43	2 2005
	Sigaralahalli சொத்தின் தன்மை AGRICULTURAL LAND					

40. The provisions of Section 24(1) and (2) of the TNGST Act provide for creation and priority of charge and are extracted below:

Section 24. Payment and recovery of tax: (1) Save as



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otherwise provided for in sub-section(2) of section 13, the tax assessed or has become payable under this Act from a dealer or person and any other amount due from him under this Act shall be paid in such manner and in such installments, if any and within such time as may be specified in the notice of assessment, not being less than twenty-one days from the date of service of the notice. The tax under sub-section (2) of section 13 shall be paid without any notice of demand. In default of such payments the whole of the amount outstanding on the date of default shall become immediately due and shall be a charge on the properties of the person or persons liable to pay the tax or interest under this Act.

(2) Any tax assessed on or has become payable by, or any other amount due under this Act from a dealer or person and any fee due from him under this Act, shall, subject to the claim of the government in respect of land revenue and the claim of the Land Development Bank in regard to the property mortgaged to it under section 28(2) of the Tamil Nadu Co-operative Land Development Banks Act, 1934(Tamil Nadu Act X of 1934), have priority over all other claims against the property of the said dealer or person and the same may without prejudice to any other mode of collection be recovered:-

(a) as land revenue, or

(b) on application to any Magistrate by such Magistrate as if it were a fine imposed by him:

41. Section 24(1) states that a charge is created on raising of a demand of tax that is, on the passing of an order of assessment. Though copies of the assessment orders are not before us, a copy of order dated 19.09.2001 passed by the Tamil Nadu Taxation Special Tribunal in T.P.No.221 of 2001 filed by R6 has been placed before us at pages 9 to 11 of compilation dated 17.11.2020.



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42. From a perusal thereof, it is clear that the assessment orders have been passed in 1994. In any event, seeing as the periods of assessment commence from 1993-94 onwards, the demands, and consequently, the charges could have been created only thereafter. The discussion in the paragraphs supra make the position clear that the charge created by TIIC is prior in time. Hence, such charge of TIIC/R4/R5 would take precedence and we hence have no hesitation in holding that it is the TIIC that would hold priority of charge.

43. Learned Special Government Pleader has made reference to the agreements entered into by R6 with the appropriate authority qua the deferral of tax payable under the Sales tax Act. It is consequent upon the defaults by the assessee in adhering to the deferral scheme that orders of assessment have come to be passed raising demands under the TNGST Act. However, it is unnecessary for us to delve into this aspect of the matter to decide the question of priority of charge as between the financial institution and the Commercial taxes Department.

44. In view of the discussion as above, the prayers in the Writ Petitions are allowed, demand notice dated 12.01.2012 is quashed and mandamus as sought for is issued, forbearing R1 and R2 from in any way



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attaching, alienating or interfering with the ownership of the petitioner in the subject property.

45. These Writ Petitions are allowed. No costs. Connected Miscellaneous Petitions are closed.

[A.S.M., J] [G.A.M., J]
21.01.2025

Index:Yes

Speaking Order

Neutral Citation:Yes

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To

1.The Commercial Tax Officer,
Commercial Tax Department,
Palakode Town & Taluk,
Dharmapuri District.

2.The Assistant Commissioner,
Commercial Tax Department
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